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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91220386
Party	Plaintiff Dr. Linda S. Restrepo
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Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Linda S. Restrepo
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Date	05/28/2015
Attachments	USPTOMOTIONTODISMISS.pdf(210185 bytes)

DR. LINDA S. RESTREPO,
Opposer,
v.
ALLIANCE RIGGERS & CONSTRUCTORS,
LTD., CORDOVA ALLIANCE, LLC. and
CORDOVA ALLIANCE, LLC.,
Applicants.

TO THE HONORABLE JUDGE OF SAID COURT:

Now Come Opposer Linda S. Restrepo and files this her Rule 12b(6) Motion to Dismiss Applicant's Trademark application and Brief in support thereof as follows:

FRCP Rule 12(b) pertains to pretrial motions, and 12(b)(6) specifically deals with motions to dismiss for failure to state a claim upon which relief can be granted.

On May 18, 2012, Applicant Phillip Cordova and Attorney R. Wayne Pritchard filed an application to trademark the name "allianceriggersandconstructors" making sworn affidavits under the provisions of 18 U.S.C. §1001 to the USPTO on issues

which in fact were false¹. At the time Phillip Cordova and Attorney Wayne R. Pritchard acting under a power of Attorney from Alliance signed their false² affidavit under 18 U.S.C. §1001 to the USPTO on May 18, 2012, they knew or should have known that Alliance Steel, Inc. domiciled at 3333 South Council Road, Oklahoma City OKLAHOMA 72179, was the legal owner of the trademark name "Alliance" under Federal Trademark Registrations 3604909 and 3600905. They also knew that they had pirated the Patented three pronged ruler design of Paul Thomas Wood, Mandeville, LA Pub. No: US2010/0083515 A1; Pub. Date: April 8, 2010.³ As well as the fact that a domain name had already been purchased.

In the Office Action from the USPTO, the applicants for trademark application SN 76711574 were required to make an Entity Clarification of its alleged general

¹ While in their April 21, 2014 Trademark Application Alliance Riggers Phillip Cordova, General Manager who has hired a trademark attorney, stated under the provisions of 18 U.S.C. §1001 with full knowledge that willful, false statements made in his trademark application may jeopardize the validity of the application he continued to state that he "believes no other person, firm, corporation, or association has the right to use said mark in commerce either in identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive and that all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true". This is spite of the fact that Mr. Cordova and his trademark attorney knew or should have known and chose to ignore the documentation and facts contained therein.

² Fraud in procuring a federal trademark registration occurs when an applicant for registration knowingly makes a specific false, material representation of fact in connection with an application to register with the intent of obtaining a registration to which it is otherwise not entitled. See *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009).

³ The Trademark Trial and Appeal Board's has explained that: "[t]he appropriate inquiry is not into the registrant's subjective intent, but rather into the objective manifestations of that intent.". The board went on to hold that "[a] trademark applicant commits fraud in procuring a registration when it makes material representation of fact in its declaration, which it knows or should known to be false or misleading." *Id.*

and limited partnerships, to include their their citizenship, Applicant refused to do so and instead chose to “abandon” their trademark application⁴.

The USPTO refused the registration of the applied-for mark SN 76711574 on September 14, 2012 because of a likelihood of confusion with the marks in U.S. Registration Nos. 3604909 and 3600905. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq. Nothing has changed since the 2012 USPTO determination.

There still exists a likelihood of confusion with the marks in U.S. Registration Nos. 3604909 and 3600905. Furthermore, the USPTO ruling directed Alliance to disclaim the use of the words “riggers & constructors” as merely descriptive, common words found in the English dictionary and not subject to trademark registration.

On April 21, 2014 exactly two years from the first filing and 8 months after receiving their abandonment notice from the USPTO (April 15, 2013) in an apparent attempt to pull a fast one on the USPTO Alliance filed the same exact trademark application it had previously filed May 22, 2012.

On April 21, 2014, Attorney R. Wayne Pritchard filed an application for the trademark name “allianceriggersandconstructors” for the second time, making

⁴ Entity Clarification

Applicant indicated it is a Limited Partnership. However, applicant has not indicated the names and citizenship of the partners. After setting forth the applicant’s name and entity, the application of a partnership should specify the state or country under whose laws the partnership or joint venture is organized. 37 C.F.R. §2.32(a)(3)(ii). In addition, domestic partnerships must set forth the names, legal entities, and national citizenship (for individuals), or state or country of organization (for businesses), of all general partners or active members that compose the partnership or joint venture. 37 C.F.R. §§2.32(a)(3)(iii) and (iv). These requirements apply to both general and limited partnerships. They also apply to a partnership that is a general partner in a larger partnership. Limited partners or silent or inactive partners need not be listed. The following format should be used:

sworn affidavits under the provisions of 18 U.S.C. §1001 to the USPTO on issues which in fact were false⁵. At the time Phillip Cordova and Attorney Wayne R. Pritchard acting under a power of Attorney from Alliance signed their false affidavit under 18 U.S.C. §1001 to the USPTO on April 21, 2014 (filed under Serial Number 76716209) they knew or should have known that Alliance Steel, Inc. domiciled at 3333 South Council Road, Oklahoma City OKLAHOMA 72179 was the legal owner of the trademark name "Alliance" under Federal Trademark Registration 3604909 and 3600905. They also knew or should have known that they had pirated the three pronged ruler Patented design of Paul Thomas Wood, Mandeville, LA Pub. No: US2010/0083515 A1; Pub. Date: April 8, 2010 and that a domain name already existed.

Accordingly, Phillip Cordova and Attorney Wayne R. Pritchard acting under a power of Attorney from Alliance Riggers & Constructors, Ltd, had Alliance Steel, Inc., the Patent design of Paul Thomas and the domain name of the Opposers in mind when attempting to obtain a trademark in bad faith which they knew they were not entitled to.

The reasons the USPTO refused the first registration are the same basis that the second registration of the same generic words and mark should be once again denied and their application should be dismissed under the mandates of Fed. R. Civ. P. 12(b)(3).

⁵ Fraud in procuring a federal trademark registration occurs when an applicant for registration knowingly makes a specific false, material representation of fact in connection with an application to register with the intent of obtaining a registration to which it is otherwise not entitled. See *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009).

Which brings us to the current RULE 12B(6) MOTION TO DISMISS APPLICANT'S TRADEMARK APPLICATION; notwithstanding the fact that Alliance Riggers & Constructors, Ltd., has officially and formally "disclaimed" usage of the generic words "riggers & constructors" and the name "Alliance" TWICE they have no standing to register a trademarked name and the generic and "merely descriptive" words. The applicant for trademark application SERIAL NUMBER: 76716209 has failed to state a claim upon which relief can be granted, neither is it plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949-50(2009). It is an unconstitutional application of Federal Trademark Laws for trademark application SN 76716209 to continue.

Furthermore, Applicant not only has disclaimed any rights to the names "Alliance" and "riggers and constructors" but Applicant on November 18, 2014, has registered to do business under a different new entity known as Alliance Tower Cranes, LLC., registered agent Phillip Cordova, 1200 Kastrin St., El Paso, Texas 79907, (Exhibit A) thus formally abandoning for all intent and purposes any rights to use the name "Alliance Riggers & Constructors" and ceasing to exist as "Alliance Riggers & Constructors". Thus, under the law Applicant has no standing to apply for a trademark to the name "Alliance Riggers & Constructors" and the USPTO must dismiss the trademark application SERIAL NUMBER: 76716209.

Moreover, Cordova Alliance, LLC., is a separate new Corporate entity which has deceptively been implemented into the current Trademark application SERIAL NUMBER: 76716209 voiding the application and making it legally insufficient because: (1) Cordova Alliance, LLC., has not made any Entity Clarification of its alleged general and limited partnerships, to include their citizenship, (2) Cordova

Alliance, LLC., as a separate Corporate Entity has not paid a trademark application fee, (3) There is no USPTO written policy or regulation which permits TWO separate Corporate entities to both claim and file a trademark application for one fee and one trademark (4) If Cordova Alliance, LLC., is allowed to piggyback on the application fee of another Corporate Entity, there will be no stopping point. It can become an new precedent established within the USPTO in which, two, three, a hundred different Corporate Entities can file a trademark application based on a singular application fee, (5) Cordova Alliance, LLC., has not stated, nor has it shown any rights or legitimate interests in respect to the name "alliance riggers & constructors" a name they are attempting to trademark, (6) Cordova Alliance, LLC., has not stated what business they are in. The applicant for trademark application SERIAL NUMBER: 76716209 has failed to state a claim upon which relief can be granted. At this point in time, the USPTO has no information as to who the ownership of the alleged Limited Liability Corporation are, and what citizenship they claim.

The applicant Cordova Alliance, LLC., has not stated that it has a bona fide intent to use the August 4, 2014 new mark for related goods or services. Under these circumstances neither Alliance Riggers & Constructors, Ltd. or Cordova Alliance, LLC., have standing to bring this Trademark Application SN 76716209.

The documentation before the USPTO shows that neither Cordova Alliance, LLC., nor Alliance Riggers & Constructors, Ltd. have:

(1) used the opposed mark in commerce as of the filing date of Applicant's use-based application,

- (2) the opposed mark is generic for identified services which Cordova Alliance, LLC., has not specified they are in, at this point the USPTO has no idea what alleged services Cordova Alliance, LLC., is engaged in,
- (3) the opposed mark is incapable of functioning as a service mark,
- (4) neither Cordova Alliance, LLC. nor Alliance Riggers & Constructors, Ltd. are the rightful owner of the mark identified trademark application SN 76716209,
- (5) the mark in trademark application SN 76716209 is merely ornamental, is not inherently distinctive, and has not become distinctive as an indicator of the source of the unidentified services of Cordova Alliance, LLC. or Alliance Riggers & Constructors, Ltd.

NEW DRAWING SUBMITTED

The documents before the Trademark Trial and Appeal Board document that on August 4, 2014 the trademark applicant SN 76716209 submitted a “new” drawing and alleged trademark to the USPTO. A drawing and trademark that was different from the original one submitted in their April 21, 2014 application.

Not only does the USPTO have before it a trademark application for Cordova Alliance, LLC., an undefined Corporate Entity, whose citizenship is unknown and who has NOT PAID the trademark application fee, but a NEW trademark design which was not part of, nor the same trademark for which the April 21, 2014 trademark application SN 76716209 was filed.

The documents before the USPTO show that this “new” trademark design was generated and the “first use” of said alleged trademark was August 4, 2014. As a matter of law neither neither Alliance Riggers & Constructors, Ltd., nor Cordova Alliance, LLC., have utilized the August 4, 2014 new trademark design for at least

three years in commerce for their alleged (unidentified) goods and services. As a matter of law, neither Alliance Riggers & Constructors, Ltd., nor Cordova Alliance, LLC., have any standing to file a trademark application based on "one trademark name" and then obtain a trademark based on "another trademark name and design". Trademark application SN 76716209 should be dismissed for lack of standing and failure to state a claim upon which relief may be granted.

Neither Alliance Riggers & Constructors, Ltd. or Cordova Alliance, LLC., have any state, federal or common law trademark in the newly created alleged trademark as of August 4, 2014. Neither have they stated nor shown any legitimate interests in the newly created trademark.

Neither has the new trademark "first used on August 4, 2014" been published for opposition as required by USPTO regulations. It is an unconstitutional application of the Federal Trademark Laws for trademark application SN 76716209 to continue.

Again, allowing Cordova Alliance, LLC., to freely interchange alleged "trademarks" and substitute one for another at "random" presents an unconstitutional and illegal application of current Federal trademark laws. Allowing these transgressions can set a dangerous new precedent within the USPTO in which, two, three, a hundred different alleged trademarks can be substituted or switched continually and infinitely under the same registration fee and trademark application. The danger and negative implications this practice imposes upon the legitimacy of the entire trademark application process is far fetching and global in nature.

II MOTION TO DISMISS

A motion to dismiss for lack of standing and failure to state a claim upon which relief may be granted is a test solely of the legal sufficiency of the complaint. *Advanced Cardiovascular Sys., Inc. v. SciMed Life Sys., Inc.* 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993).

Rights or Legitimate Interests

Once a complainant makes a prima facie showing of absence of rights or legitimate interests in a “trademark” name on the part of the alleged trademark applicant⁶, as the opposer Linda S. Restrepo has done herein, the evidentiary burden shifts to the respondent to show by concrete evidence that it does have rights or legitimate interests in that trademark name. See *Hanna-Barbera Prods., Inc. v. Entm’t Commentaries*, FA741828 (Nat. Arb. Forum Aug. 18, 2006).

⁶ The documentation before the USPTO shows that neither Cordova Alliance, LLC., nor Alliance Riggers & Constructors, Ltd. have:

- (1) used the opposed mark in commerce as of the filing date of Applicant’s use-based application. See, e.g. *Clorox Co. v. Salazar*, 108 USPQ2d 1083, 1086-87 (TTAB 2013).
- (2) the opposed mark is generic for identified services which Cordova Alliance, LLC., has not specified they are in, at this point the USPTO has no idea what alleged services Cordova Alliance, LLC., is engaged in. See Trademark Act § 23.
- (3) the opposed mark is incapable of functioning as a service mark. See Trademark Act §§ 1,2 and 45.
- (4) neither Cordova Alliance, LLC. nor Alliance Riggers & Constructors, Ltd. are the rightful owner of the proposed mark identified in the trademark application SN 76716209. See, e.g., *Nahshin v. Product Source Int’l, LLC*, 107 USPQ2d 1257 (TTAB 2013).
- (5) the mark in trademark application SN 76716209 is merely ornamental, is not inherently distinctive, and has not become distinctive as an indicator of the source of the unidentified services of Cordova Alliance, LLC. See Trademark Act §§ 1,2 and 45.

In order to withstand such a motion each Corporate Entity, Cordova Alliance, LLC., and Alliance Riggers & Constructors, Ltd. independently and separately need to allege such facts as would, if proven establish that they are entitled to the relief sought; that is:

- (1) Cordova Alliance, LLC., and Alliance Riggers & Constructors, Ltd. independently and separately must establish that they have standing to maintain the proceeding;
- (2) Cordova Alliance, LLC., and Alliance Riggers & Constructors, Ltd. independently and separately must establish a valid ground exists for approval of the registration they seek. *Young v. AGB Corp.*, 152 F3d 1377, 47 USPQ2d 1752, 1854 (Fed. Cir. 1998).

Standing is a threshold issue that must be proved in every inter parties case. *Lipton industries, Inc., v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 188 (CCPA 1982). To establish standing Cordova Alliance, LLC., and Alliance Riggers & Constructors, Ltd. independently and separately must show that they have a direct and personal stake in the outcome of this proceeding and to the “newly created” alleged trademark filed August 4, 2014.

It is clear as a matter of law that two separate legal entities, Cordova Alliance, LLC., and Alliance Riggers & Constructors, Ltd., cannot both claim rights to the same alleged trademark name.

The chameleon approach Cordova Alliance, LLC., and Alliance Riggers & Constructors, Ltd., have taken of applying for “any trademark name and design” that the USPTO will accept makes evidentiary clear that neither Cordova Alliance,

LLC., nor Alliance Riggers & Constructors, Ltd., have a valid or legitimate trademark application or name and thus have no standing herein.

The Applicant's attempt to obtain a trademark to prevent legitimate trademarks from being registered, and to benefit monetarily from any variation of any trademark they may be able to deceive the USPTO into granting them.

Cordova Alliance, LLC., and Alliance Riggers & Constructors, Ltd., are fully aware of the legally owned trademark of (Alliance Steel), the Patented design of Paul Thomas Wood, Mandeville, LA Pub. No: US2010/0083515 A1; Pub. Date: April 8, 2010 and that a domain name already exists.

Applicant April 21, 2014 fraud in procuring a federal trademark registration and their knowing specific false, material representation of fact in connection with the application to register was done with the intent of obtaining a registration to which they are not otherwise not entitled. See *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009).

Since neither Cordova Alliance, LLC., and Alliance Riggers & Constructors, Ltd., have any legal interest in the name they are attempting to obtain a trademark on, there is no reasonable basis in that that either Cordova Alliance, LLC., and Alliance Riggers & Constructors, Ltd. have any direct, personal or commercial interest in the outcome of this proceeding. Without such interest, Cordova Alliance, LLC., and Alliance Riggers & Constructors, Ltd., do not have standing and they have failure to state a claim upon which relief can be granted.

Trademark application SN 76716209 is an unconstitutional application of Federal Trademark Laws; it should never have been filed at all. It is fatally deficient

on the law as well and, barring dismissal under Fed. R. Civ. P. 12(b)(3), this Court can, and should dismiss it for failure to state a claim.

WHEREFORE, PREMISES CONSIDERED, Opposer Linda S. Restrepo, requests that trademark application SN 76716209 submitted by Cordova Alliance, LLC., and Alliance Riggers & Constructors, Ltd. be dismissed in its entirety and that Opposer Linda S. Restrepo be award such other and further relief to which she is entitled in equity and in law.

Respectfully submitted.

/s/ LINDA S. RESTREPO-Pro Se
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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May 2015 a true and correct copy of the foregoing document was delivered as required by the Federal Rules of civil Procedure by mailing a copy of same via first class mail, postage pre-paid to Wayne R. Pritchard, P.C., 300 East Main, Suite 1240, El Paso, Texas 79901.

/s/ Linda S. Restrepo
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TEXAS SECRETARY of STATE
CARLOS H. CASCOS**EXHIBIT A**[UCC](#) | [Business Organizations](#) | [Trademarks](#) | [Notary](#) | [Account](#) | [Help/Fees](#) | [Briefcase](#) | [Logout](#)**BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY**

Filing Number: 802103054 **Entity Type:** Domestic Limited Liability Company (LLC)
Original Date of Filing: November 18, 2014 **Entity Status:** In existence
Formation Date: N/A
Tax ID: **FEIN:**
Duration: Perpetual
Name: ALLIANCE TOWER CRANES, LLC
Address: [ADDRESS NOT PROVIDED]

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES
Last Update	Name	Title	Address		
November 18, 2014	Phillip H. Cordova	Manager	1200 Kastrin St. El Paso, TX 79907-1709 USA		
November 18, 2014	Paul B. Cordova	Manager	1200 Kastrin St. El Paso, TX 79907-1709 USA		
November 18, 2014	Phillip H. Pruett	Manager	1200 Kastrin St. El Paso, TX 79907-1709 USA		

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